

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWTIS DONALD RHODEN,) NO. CV 08-00420 FMC (SS)
Plaintiff,)
v.) MEMORANDUM AND ORDER DISMISSING
MICHAEL S. CARONA, et al.,) COMPLAINT WITH LEAVE TO AMEND
Defendants.)

Plaintiff, a civil detainee proceeding pro se, lodged a Complaint pursuant to 42 U.S.C. § 1983 (the "Complaint") on April 18, 2008 against various individual defendants. The Complaint was filed on May 30, 2008, after the Court granted Plaintiff's request to proceed in forma pauperis. For the reasons stated below, the Complaint is dismissed with leave to amend.¹

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¹ Magistrate judges may dismiss a complaint with leave to amend without approval of the district judge. McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

ALLEGATIONS OF THE COMPLAINT

Plaintiff is a civil detainee at Coalinga State Hospital pending the outcome of his civil commitment hearing under the Sexually Violent Predators Act ("SVPA"), Cal. Welf. & Inst. Code § 6600 et seq. (Complaint at 2). Following his release from Soledad State Prison, Plaintiff was transferred to the Orange County Men's Jail pursuant to the SVPA petition filed against him. (*Id.* at 7). The Complaint names as defendants former Orange County Sheriff Michael S. Carona and the following current or former employees of Orange County Men's Jail: Deputy Captain D. Bergquist, Deputy Lieutenant W. Griffin, Deputy Lieutenant T. Gallivan, Deputy Sergeant Newmyer, Deputy Sergeant Foust, Deputy Sergeant Pepe, Deputy Sergeant Curry, Deputy P. Kinney, Deputy Baltodano, Deputy Miller, Deputy Zwirner, Deputy R. Epperson, Deputy Villalogosa, Deputy Garnett, Deputy Martino and John Does 1 through 10. (*Id.* at 1, 4-6).

18 According to Plaintiff's sixty-page statement of claims and
19 supporting facts, prison officials subjected him to a variety of
20 physical and mental abuses as a result of his status as a sex offender
21 and in retaliation for filing grievances and disciplinary appeals. (See
22 id. at 6-66). Plaintiff seeks compensatory and punitive damages against
23 all defendants in the sum of \$41.5 million, as well as declarative and
24 injunctive relief. (Id. at 66-68).

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1 DISCUSSION
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3 When a plaintiff appears pro se in a civil rights case, the court
4 must construe the pleadings liberally and afford the plaintiff the
5 benefit of any doubt. Karim-Panahi v. Los Angeles Police Dep't, 839
6 F.2d 621, 623 (9th Cir. 1988). In giving liberal interpretation to a
7 pro se complaint, the court may not, however, supply essential elements
8 of a claim that were not initially pled. Ivey v. Bd. of Regents of
9 Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). A court must give
10 a pro se litigant leave to amend the complaint unless it is "absolutely
11 clear that the deficiencies of the complaint could not be cured by
12 amendment." Karim-Panahi, 839 F.2d at 623 (internal quotation marks
13 omitted).

14
15 Under Federal Rule of Civil Procedure 12(b) (6), a trial court may
16 dismiss a claim sua sponte "where the claimant cannot possibly win
17 relief." Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th Cir.
18 1987); see also Baker v. Director, U.S. Parole Comm'n, 916 F.2d 725, 726
19 (D.C. Cir. 1990) (per curiam) (adopting Ninth Circuit's position in Omar
20 and noting that such a sua sponte dismissal "is practical and fully
21 consistent with plaintiff's rights and the efficient use of judicial
22 resources"). The Court finds that the instant Complaint fails to state
23 a cognizable claim for relief against the Defendants.

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1 A. The Claims Against Defendants In Their Official Capacities Are
2 Defective

4 Plaintiff is suing all defendants for monetary damages pursuant to
5 42 U.S.C. § 1983 in their official capacities. (Complaint at 4, 66).
6 Official capacity claims are another way of pleading an action against
7 an entity of which an officer is an agent, i.e., suits against state
8 officials in their official capacity therefore should be treated as
9 suits against the state or municipal entity. Hafer v. Melo, 502 U.S.
10 21, 25, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991) (citing Kentucky v.
11 Graham, 473 U.S. 159, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)).

12
13 When an individual sues a local government for violation of his
14 constitutional rights, the municipality is liable if the individual can
15 establish that the local government "had a deliberate policy, custom, or
16 practice that was the 'moving force' behind the constitutional violation
17 he suffered." Galen v. County of Los Angeles, 477 F.3d 652, 667 (9th
18 Cir. 2007) (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658,
19 694-95, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). In Monell, however,
20 the Supreme Court specifically rejected governmental liability based on
21 the doctrine of respondeat superior. Monell, 436 U.S. at 691-94.

22
23 Here, the municipal entity that the officers and sheriff represent
24 is the Orange County Men's Jail. If the municipal entity is named as a
25 defendant, it is not only unnecessary and redundant to name an officer
26 in his official capacity, but it is also improper. Luke v. Abbott, 954
27 F. Supp. 202 (C.D. Cal. 1997); see also Megargee v. Wittman, ___ F. Supp.
28 2d ___, 2008 WL 752470, at *13 (E.D. Cal. 2008) (citing Luke). The real

1 party in interest is the local government entity, not the officer.
2 Luke, 954 F. Supp. at 203-04 (citing Graham, 473 U.S. at 165-66). If
3 Plaintiff intends to proceed with this action, he must clarify whether
4 he is suing the individual officers in their individual or official
5 capacities or whether he is bringing a Monell claim against the Orange
6 County Men's Jail.

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8 **B. Plaintiff's Complaint Fails To Comply With Rule 8**

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10 The Complaint reflects numerous violations of Federal Rule of Civil
11 Procedure 8 ("Rule 8"), entitled "General Rules of Pleading." Rule
12 8(a)(2) dictates that pleadings contain a "short and plain statement of
13 the claim showing that the pleader is entitled to relief." Rule 8(e)(1)
14 instructs that "[e]ach averment of a pleading shall be simple, concise,
15 and direct."

16

17 The Complaint does not satisfy the minimal pleading requirements of
18 Rule 8. The Complaint is much too long -- it contains too many facts,
19 duplicative information and inconsistent theories. Thus, Plaintiff's
20 claims are unclear and difficult to understand. It would be difficult,
21 if not impossible, for Defendants to frame a responsive pleading given
22 Plaintiff's inclusion of duplicative and extraneous facts.

23

24 In sum, the Complaint fails to provide a short, clear and concise
25 statement of Plaintiff's claims, as required by Rule 8. Where the
26 violation of Rule 8 is egregious, as in this case, dismissal is
27 appropriate. See McHenry v. Renne, 84 F.3d 1172, 1177-80 (9th Cir.
28 1996) (affirming dismissal of third amended complaint that was

1 "argumentative, prolix, replete with redundancy, and largely irrelevant"
2 and violative of Rule 8); see also Nevijel v. North Coast Life Ins. Co.,
3 651 F.2d 671, 673-74 (9th Cir. 1981) (affirming dismissal of first
4 amended complaint that named additional defendants without leave of
5 court and was "equally as verbose, confusing and conclusory as the
6 initial complaint"). Thus, the Complaint is also dismissed with leave
7 to amend for violations of Rule 8.

8

9 C. Plaintiff's Complaint Fails To Specify Which Defendants Personally
10 Participated In Specific Acts

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12 To demonstrate a civil rights violation a plaintiff must show that
13 the defendant's conduct caused a deprivation of the plaintiff's
14 constitutional or statutory rights. See 42 U.S.C. § 1983; Hydrick v.
15 Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007). "[T]he requisite causal
16 connection can be established not only by some kind of direct personal
17 participation in the deprivation, but also by setting in motion a series
18 of acts by others which the actor knows or reasonably should know would
19 cause others to inflict the constitutional injury." Hydrick, 500 F.3d
20 at 988 (quoting Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)).
21 The defendant's conduct can be an affirmative act, participation in
22 another's affirmative act, or failing to perform an act which the
23 defendant is legally required to perform. Id.

24

25 Here, Plaintiff's allegations, which relate to events that occurred
26 during his detention at the Orange County Men's Jail, do not make clear
27 exactly which defendants personally caused a particular constitutional
28 deprivation. His claims include generalized assertions such as, "the

1 above abuses against Plaintiff continued unchecked by the Defendants."
2 (Complaint at 19). Such allegations are vague and conclusory. As such,
3 they are not sufficient to establish personal participation by any
4 particular defendant in constitutional violations. See Ivey, 673 F.2d
5 at 268 ("Vague and conclusory allegations of official participation in
6 civil rights violations are not sufficient to withstand a motion to
7 dismiss.").

8

9 CONCLUSION

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11 If Plaintiff still wishes to pursue this action, he is granted
12 thirty (30) days from the date of this Memorandum and Order within which
13 to file a First Amended Complaint, curing the defects in the Complaint
14 described above. The First Amended Complaint, if any, shall be complete
15 in itself and shall bear both the designation "First Amended Complaint"
16 and the case number assigned to this action. It shall not refer in any
17 manner to the original Complaint. The caption shall include all parties
18 that Plaintiff is suing. Each page of the First Amended Complaint must
19 be consecutively numbered.

20

21 In any amended complaint, Plaintiff should confine his allegations
22 to those operative facts supporting each of his claims. Plaintiff is
23 advised that pursuant to Federal Rule of Civil Procedure 8(a), all that
24 is required is a "short and plain statement of the claim showing that
25 the pleader is entitled to relief." **Plaintiff is strongly encouraged to
utilize the standard civil rights complaint form when filing any amended
complaint, a copy of which is attached.** Plaintiff should make clear
which defendant committed a particular act of misconduct. Individuals

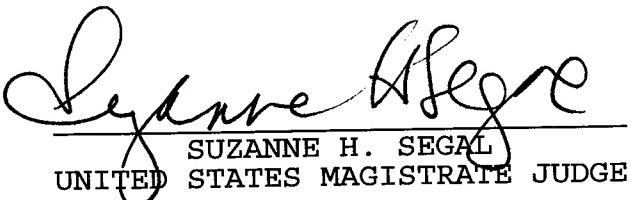
1 who have not engaged in any alleged misconduct should not be named as
2 defendants. It is not necessary for Plaintiff to cite case law or
3 include legal argument. Moreover, irrelevant exhibits or other
4 extraneous documents are not necessary for Plaintiff to include with his
5 complaint.

6

7 Plaintiff is explicitly cautioned that failure to timely file a
8 First Amended Complaint, or failure to correct the deficiencies
9 described above, will result in a recommendation that this action be
10 dismissed for failure to prosecute pursuant to Federal Rule of Civil
11 Procedure 41(b). Plaintiff is further advised that, if he does not wish
12 to pursue this action, he may voluntarily dismiss it by filing a notice
13 of dismissal in accordance with Federal Rule of Civil Procedure
14 41(a)(1). A sample notice is attached to this order as well.

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16 DATED: June 20, 2008



Suzanne H. Segal
UNITED STATES MAGISTRATE JUDGE

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FULL NAME	
COMMITTED NAME (if different)	
FULL ADDRESS INCLUDING NAME OF INSTITUTION	
PRISON NUMBER (if applicable)	

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

v. PLAINTIFF, DEFENDANT(S).	CASE NUMBER <i>To be supplied by the Clerk</i>
	CIVIL RIGHTS COMPLAINT PURSUANT TO (Check one) <input type="checkbox"/> 42 U.S.C. § 1983 <input type="checkbox"/> Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner: Yes No
2. If your answer to "1." is yes, how many? _____

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

a. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

b. Court _____

c. Docket or case number _____

d. Name of judge to whom case was assigned _____

e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____

f. Issues raised: _____

g. Approximate date of filing lawsuit: _____

h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? Yes No

2. Have you filed a grievance concerning the facts relating to your current complaint? Yes No

If your answer is no, explain why not _____

3. Is the grievance procedure completed? Yes No

If your answer is no, explain why not _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff _____
(print plaintiff's name)

who presently resides at _____
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

(institution/city where violation occurred)

on (date or dates) _____, _____, _____
(Claim I) (Claim II) (Claim III)

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

2. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

3. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

D. CLAIMS*

CLAIM I

The following civil right has been violated:

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right.

**If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.*

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

(Date)

(Signature of Plaintiff)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Plaintiff(s), v. Defendant(s).	CASE NUMBER NOTICE OF DISMISSAL PURSUANT RULE 41(a) or (c) F.R.Civ.P.
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PLEASE TAKE NOTICE: (*Check one*)

- This action is dismissed by the Plaintiff(s) in its entirety.
- The Counterclaim brought by Claimant(s) _____ is dismissed by Claimant(s) in its entirety.
- The Cross-Claim brought by Claimants(s) _____ is dismissed by the Claimant(s) in its entirety.
- The Third-party Claim brought by Claimant(s) _____ is dismissed by the Claimant(s) in its entirety.
- ONLY** Defendant(s) _____

is/are dismissed from (*check one*) Complaint, Counterclaim, Cross-claim, Third-Party Claim brought by _____.

The dismissal is made pursuant to Rule 41(a) or (c) of the Federal Rules of Civil Procedure.

Date

Signature of Attorney/Party

NOTE: F.R.Civ.P. 41(a): This notice may be filed at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

F.R.Civ.P. 41(c): Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.